

Fair Housing Update

Fair Housing of the Dakotas

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FHD SUPPORTS APPEAL OF NORTH DAKOTA ACCESSIBILITY CASE

In October, 2008, the Fair Housing of the Dakotas (FHD) filed an amicus brief in support of the State of North Dakota in the case North Dakota Department of Labor vs. Matrix Properties Corporation. In the brief, the FHD, along with 11 other non-profit agencies, argued that a lower court's decision was in error.

The decision centers upon the timeline and right to file complaints of housing discrimination against properties which are not designed and constructed to be accessible to people with disabilities. A copy of the brief is available on the FHD's web site Case and Press Page. (Supreme Court Docket No. 20080224)

UPDATE ON PREVIOUSLY FILED CASES

In August, 2008, the North Dakota Department of Labor's Human Rights Division notified the Fair Housing of the Dakotas (FHD) that it had issued two charges of discrimination involving a Bismarck, ND property. The FHD had assisted a Bismarck resident in filing a complaint in February, 2008 and also filed a complaint on behalf of the FHD. The charges noted that there was probable cause that discrimination had occurred through the denial of reasonable accommodations for people with disabilities who require service animals. The parties have elected for district court. Pending. (NDDOL Case No. ND08-08-406 & ND08-08-407)

In September, 2008, the US Department of Housing & Urban Development notified the Fair Housing of the Dakotas (FHD) that it had issued a charge of discrimination against a Fargo, ND/Moorhead, MN housing provider. The FHD had filed a complaint alleging discrimination in May, 2007. The charge noted that there was probable cause that discrimination had occurred against people with disabilities who requested reasonable accommodations for service animals through the limiting of a service animal's size, breed and the requiring of additional insurance coverage when such reasonable accommodations were requested. The parties have elected for district court. Pending. (HUD Case No. 05-07-1121-8)

In September, 2008, the US Department of Housing & Urban Development notified the Fair Housing of the Dakotas (FHD) that it had issued two charges of discrimination involving a Sioux Falls, SD property. The FHD had assisted a Sioux Falls resident in filing a complaint in February, 2008 and also filed a complaint on behalf of the FHD. The charges noted that there was probable cause that discrimination had occurred due to tenant and/or guest's race (African American) and familial status. The parties have elected for district court. Pending. (HUD Case No. 08-08-0119-8 & 08-08-0131-8)

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Fair Housing of the Dakotas (FHD) is a non-profit organization serving North and South Dakota with a mission to work to eliminate housing discrimination and to ensure equal housing opportunities for all. The FHD provides assistance to individuals pursuing legal rights and remedies related to fair housing, offers housing assistance and counseling, provides community education, promotes community involvement and performs research in the area of housing.

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housing provider for failing to design and construct a multi-family rental property to be accessible to people with disabilities. The complaints had originally been filed in July, 2004. The parties have elected for district court. Pending. (HUD Case No. 08-04-0207-8 & 08-04-0208-8)

For more information on any of these cases, please visit www.fhdakotas.org and go to the Case & Press Page or contact the FHD.

FAIR HOUSING AND REASONABLE ACCOMMODATIONS

The Fair Housing of the Dakotas receives a number of phone calls and emails from housing providers and tenants regarding reasonable accommodations for people with disabilities. Because each situation is unique, it must be viewed with the facts related specifically to the parties involved and their needs.

However, some guidance is available to assist parties in determining overall proper courses of action. In May, 2004, the US Department of Housing & Urban Development (HUD) and the US Department of Justice (DOJ) issued a Joint Statement on Reasonable Accommodations Under the Fair Housing Act. Although this Statement is a few years old, some individuals are unaware of its availability so we will discuss some of its sections here. The Statement also provides a number of examples within it.

Who qualifies as a person with a disability? Question 3 of the Statement reviews who qualifies as

a person with a disability under Federal Fair Housing Laws. Specifically, the Statement states "The Act defines a person with a disability to include (1) individuals with a physical or mental impairment that substantially limits one or more major life activities; (2) individuals who are regarded as having such an impairment; and (3) individuals with a record of such an impairment." Question 3 goes on to describe physical and mental impairments in more detail. Question 4 within the Statement discusses who would not be covered under the Federal Fair Housing Act.

Question 6 within the Statement reviews what a reasonable accommodation is while Questions 7 and 8 review when a reasonable accommodation can be denied.

May a housing provider charge an extra fee or require an additional deposit from applicants or residents with disabilities as a condition of granting a reasonable accommodation? Question 11 notes, "No. Housing providers may not require persons with disabilities to pay extra fees or deposits as a condition of receiving a reasonable accommodation." The Fair Housing of the Dakotas has argued that the charging of additional deposits, fees and/or insurance coverage for those with disabilities who need reasonable accommodations that are not required of all residents at the property would be violations of the Fair Housing Act.

Question 12 of the Statement reviews when and how someone should request a reasonable accommodation. Questions 14 and 15 review how a housing provider should

respond when a reasonable accommodation request is made.

Question 16 reviews what inquiries, if any, a housing provider can make of current or potential residents regarding the existence of a disability when they have not asked for an accommodation. Question 17 reviews what information can be requested by a housing provider when an accommodation is requested by a person with a disability. Question 18 also reviews the materials which can be asked for by a housing provider to support a requested accommodation.

We would encourage those with questions to contact us. You can also receive a copy of the guidance by contacting the FHD or visit the FHD web site at www.fhdakotas.org and choose the "What is Fair Housing" link and scroll down to the section on Disability & Fair Housing which links to not only this Statement but also a number of additional resources.

NEWS FROM HUD

Below is information received from HUD on recent charges of discrimination:

HUD Charges New York Co-Op with Discriminating Against Family of Child with Autism. HUD has charged a private cooperative in New York City with violating the Fair Housing Act in refusing to allow a family to obtain an animal that provides emotional support for its autistic child. After receiving documentation from child's doctors, the co-op agreed to permit the animal, but subject to a "Pets License Agreement," drafted specifically

for this family. HUD charged the Agreement contained unreasonable terms that effectively denied the reasonable accommodation request of the family.

HUD Charges Alabama Landlords for Forcing White Couple to Move After Visit from Black Neighbors. HUD has filed discrimination charges against the owners of a house in Tallassee, Alabama, who allegedly forced their white tenants to move after the owners saw the couple talking with black neighbors in the front yard. According to the charge, the white tenant recorded the owner saying, "If y'all want to have African-Americans to visit, we're going to ask you to move..." The owner also reportedly later told the couple, "You should live in the projects if you want to interact with those people...I don't care if you made a complaint to HUD, you have to move."

HUD Charges Owners, Managers of Long Island Cooperative with Disability Discrimination. HUD has charged the owners and managers of a cooperative-apartment complex in Rockville Centre, New York, with violating the Fair Housing Act in refusing to permit a 90-year old woman with physical and mental disabili-

ties to have a support animal in her unit.

HUD Charges Omaha Condo Association with Unlawfully Excluding Families with Children. HUD has charged an Omaha condominium association with violating the Fair Housing Act for maintaining a covenant that unlawfully prohibited the sale of units to families with children and discouraged at least three families with children from buying an available unit at the complex.

HUD Alleges Owners, Managers of San Jose Apartment Complex Discouraged Applications From Families with Children. HUD has charged the owners and managers of a 22-unit apartment complex in San Jose, CA with violating the Fair Housing Act in discouraging families with children from living there. Testers from Project Sentinel, a local fair housing organization, corroborated allegations that the property managers made discriminatory statements and otherwise discouraged families with children.

HUD Charges Florida Housing Authority for Denying Disability Accommodation. HUD has charged a local Florida housing authority with violating the Fair Housing Act for refusing to allow a disabled resident to relocate to an apartment

that had a bathroom he could use without negotiating stairs. Sometime after an injury left the resident disabled, the apartment complex relocated his family and two others in order to resolve conflicts among them. The housing authority refused to relocate the resident to an apartment with an accessible bathroom, although such units were available. Consequently, the resident and his family saw no choice but to leave their public housing unit.

HUD Charges Oregon Landlord for Refusing to Allow Assistance Dog. HUD has charged Ron Lucas and R.A. Lucas Developments, LLC, of, St. Helens, OR, with violating the Fair Housing Act for refusing to allow a person with disabilities to reside in housing with an assistance dog. Following the death of her son in May 2007, the resident, who has multiple disabilities, requested permission to live with an assistance dog, as prescribed by her physician and mental health worker. The housing provider rejected each of her three requests, despite receiving letters verifying her need for the assistance dog.

More information on these cases and others can be obtained by going to HUD's web site at: www.hud.gov/offices/ftheo/

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**This Newsletter is also available
at www.fhdakotas.org in pdf
format**

Update: Please update your records with our new web site address and email addresses for staff. See www.fhdakotas.org for more information.

FAIR HOUSING

The Federal Fair Housing Act makes it illegal to discriminate in the rental, sale or financing of housing due to a person's race, color, religion, national origin, gender, familial status and disability. North Dakota state law also protects age (40 and over) and status with respect to marriage and public assistance. South Dakota state law protects most of the federal protections and also protects due to creed and ancestry.

For information on filing a housing discrimination complaint, contact the Fair Housing of the Dakotas (1-888-265-0907), the ND Dept. of Labor (1-800-582-8032) or HUD (1-800-877-7353).

VOLUNTEERS NEEDED

The FHD is seeking volunteers to assist in gathering information

on alleged discriminatory housing practices. Volunteers are paid a stipend for their time and services and receive training. Please contact Stacy at 1-888-265-0907 or 701-221-2530 if you are interested or want more information.

WEB SITE & PUBLICATIONS

The FHD web site located at www.fhdakotas.org has several publications online regarding fair housing. Choose our "What is Fair Housing" link to view the list of publications online. Publications are also available through postal mail by completing our Publications Form available online or by contacting the FHD.

The web site also includes updates on upcoming events or trainings, state legislation of interest, past newsletters, press releases, and numerous web links to other

organizations.

DISCLOSURES

Newsletter Published Quarterly. Alternate formats will be available when requested. The information in this publication is not itself legal advice; for legal advice about a particular situation, contact an attorney.

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